IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. No. 379/2005

Judgment delivered on: September 25, 2007

National Insurance Co. Ltd. ..... Petitioner
Through: Mr. Amit Kumar Pandey, Adv.

versus

Smt. Sewa Devi & Ors. ..... Respondent
Through: Mr. S.N. Prashar, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

KAILASH GAMBHIR, J. Oral:

By the present appeal, the appellant has assailed the findings of the Tribunal mainly on two grounds, firstly the wrong multiplier has been made applicable in the case of the deceased, who was 50 years of age at the time of accident

and secondly that the Tribunal has wrongly mentioned the age of the deceased as 38 years in para 12 of the impugned Award. Counsel appearing for the appellant contends that as per the election identity card filed on record age of the deceased was duly shown as 50 years and not 38 years. Counsel also contends that correct multiplier as specified in schedule II relevant to the age of the deceased was not taken into consideration by the Tribunal.

Per contra Mr. Prashar, counsel appearing for the respondent on the other hand contends that although in para 12 of the Award age of the deceased has been mentioned as 38 years, but the same appears to be due to some error on the part of the Tribunal, which is manifest from the fact that in the operating para of the judgment the correct age of the deceased i.e. 50 years has been taken into consideration. Counsel also contends that between the age of 45-50 years the multiplier as specified in the second schedule of Motor Vehicles Act is 13 years and, therefore, there is no infirmity or illegality on the part of the Tribunal in

taking into account the multiplier of the 13 years for the age of 50 years. Counsel for the respondent also challenges the very maintainability of the present appeal and submits that the appellant has even no right to file an appeal so as to challenge either the negligence or the quantum as determined by the Court. Learned counsel placed reliance on the judgment of the Supreme Court reported in **(2002) 7 SCC 456 titled National Insurance Co. Ltd. vs Nicolletta Rohtagi & Ors.** He has referred to paras 13, 19 and 32 of the said judgment, which are reproduced below:

> **"13.** To answer the question, it is necessary to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependants of the victims of a motor vehicle accident. Under Section 96(2) of the 1939 Act which corresponds to Section 149(2) of the 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependants of the deceased against the insured. However, the said provision gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim, the question arises, what are the defences available to it under the statute? The language employed in enacting sub-section (2) of Section 149 appears to be plain and simple and there is no ambiguity in it.

It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of the 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of the 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

19. In *Shankarayya* v. *United India Insurance Co. Ltd.* it was held that an insurance company when impleaded as a party by the court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless this procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defences. In absence of the existence of the conditions precedent mentioned in Section 170, the insurance company was not entitled to file an appeal on merits questioning the quantum of compensation.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of the 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending

vehicle."

I have heard learned counsel for the parties at considerable length and have perused the records including the impugned Award. There is a total fallacy on the part of the appellant in saying that the Tribunal has taken into consideration the age of the deceased as 38 years. Perusal of the Award clearly shows that in para 13 of the impugned Award the Tribunal has taken the age of the deceased as 50 years and accordingly made the multiplier of 13 years applicable. It appears that in para 12 of the impugned order due to some error reference has been made to the age of the deceased as 38 years at the time of his death. The mention of 38 years of the age in the preceding paragraph of the impugned order can be easily ignored.

I also do not find any merit in the submission of learned counsel for the appellant that a wrong multiplier has been made applicable in the impugned Award by the Tribunal. Counsel contends that the correct multiplier for the said age of 50 years is 11 years. However, perusal of the second

schedule clearly shows that between the age of 45-50 the multiplier applicable is 13 years. Accordingly, I also do not find any merit in this submission of counsel for the appellant.

At this stage another argument is also urged by the counsel for the appellant contending that the Tribunal has not strictly followed the guidelines as laid down in the judgment of the Supreme Court reported in **1996 ACJ 581 titled Sarla Dixit and Anr. vs Balwant Yadav and Ors.** Counsel contends that in that case the multiplier as specified in the second schedule was reduced. In reply to this, counsel for the respondent contends that in para 6 of the **Sarla Dixit (supra)** case itself the Supreme Court has observed that only in exceptional circumstances deviation from the multiplier method can be made by the Tribunal. It is no doubt true that the Apex Court in some of the recent pronouncements has taken a view that Schedule II of the Act is to serve as a guide but the same cannot be said to be an invariable ready reckoner. Adopting the said principle the appellant still has to satisfy the Court as to for what reasons

the departure should be made from the guidelines of Schedule II of Motor Vehicles Act. Since the appellant has failed to advance any reason for deviating from the multiplier of Schedule II, therefore, I do not find any ground to interfere in the multiplier of 13 years. There is no merit in the petition.

Dismissed.

September 25, 2007 **KAILASH GAMBHIR, J**
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